



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2012-0436; FRL-9696-7]

Approval and Promulgation of Air Quality Implementation Plans;

West Virginia; Section 110(a)(2) Infrastructure Requirements for the 2008 Lead National

Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by West Virginia. This SIP revision provides the basic program elements specified in Clean Air Act (CAA) section 110(a)(2) necessary to implement, maintain, and enforce the 2008 lead national ambient air quality standards (NAAQS).

DATES: Written comments must be received on or [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2012-0436** by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: mastro.donna@epa.gov.
- C. Mail: EPA-R03-OAR-2012-0436, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be

made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R03-OAR-2012-0436**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental

Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814-2038, or by e-mail at velez-rosa.emlyn@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA.

I. Background

On October 15, 2008, EPA substantially strengthened the primary and secondary lead NAAQS (hereafter the “2008 lead NAAQS”), revising the level of the primary (health-based) standard from 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to $0.15 \mu\text{g}/\text{m}^3$, measured as total suspended particles (TSP), not to be exceeded with an averaging time of a rolling 3-month period. EPA also revised the secondary (welfare-based) standard to be identical to the primary standard, as well as the associated ambient air monitoring requirements. *See* 40 CFR 50.16.

Section 110(a) of the CAA requires states to submit SIP revisions that provide for the implementation, maintenance, and enforcement of new or revised NAAQS within 3 years following the promulgation of such NAAQS. Section 110(a)(2) of the CAA lists specific elements that states must meet or continue to meet in these SIP submissions. Under this section, the CAA directs all states to develop and maintain an air quality management infrastructure that includes enforceable emission limitations, an ambient monitoring program, an enforcement

program, air quality modeling capabilities, and adequate personnel, resources, and legal authority.

For the 2008 lead NAAQS, states typically have met many of the basic program elements required in CAA section 110(a)(2) through earlier SIP submissions in connection with previous lead NAAQS. Nevertheless, pursuant to CAA section 110(a)(1), states will have to review and revise, as appropriate, their existing lead NAAQS SIPs to ensure that the SIPs are adequate to address the 2008 lead NAAQS. States must provide SIP submissions, or provide a certification that the SIP addresses the elements in section 110(a)(2)(A) through (M) of the CAA. To assist states in meeting this statutory requirement, EPA issued a guidance on October 14, 2011, entitled, “Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under sections 110(a)(1) and 110(a) (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)” (hereafter the “2011 Lead Infrastructure Guidance”), which lists the basic elements that states must include in their SIPs for the 2008 lead NAAQS.

II. Summary of State Submittal

On October 26, 2011, the West Virginia Department of Environmental Protection (WVDEP) provided a submittal to satisfy the requirements of section 110(a)(2) of the CAA for the 2008 lead NAAQS. This submittal addressed the following infrastructure elements, which EPA is proposing to approve: CAA section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof. A detailed summary of EPA’s review and rationale for approving West Virginia’s submittal may be found in the Technical Support Document (TSD) for this proposed rulemaking action, which is available online at www.regulations.gov, Docket number

III. Proposed Action

EPA is proposing to approve West Virginia's SIP revision that provides the basic program elements specified in CAA section 110(a)(2) necessary to implement, maintain, and enforce the 2008 lead NAAQS. This SIP revision was submitted on October 26, 2011. This action does not include the sections, or portions thereof, of 110(a)(2)(C) and 110(a)(2)(I) of the CAA which pertain to the nonattainment requirements of part D, Title I of the CAA, since these two elements are not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and will be addressed in a separate process. Additionally, EPA is taking separate action on the portions of CAA section 110(a)(2) infrastructure elements for the 2008 lead NAAQS as they relate to West Virginia's PSD program, as required by part C of Title I of the CAA. This includes portions of the following infrastructure elements: CAA section 110(a)(2)(C), (D) and (J). EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 et seq.

Dated: June 21, 2012

W. C. Early, Acting
Regional Administrator,
Region III.

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